Senator Chris Edwards
900 Court St. NE, S-407
Salem, Oregon 97301

RE: HB 2509
May 20, 2015

Senator Edwards, Senate Environment and Natural Resources Committee Members, and To Whom It May Concern:

I write on behalf of the nonprofit Center for Food Safety (CFS), a nationwide public interest organization with a mission centered on protecting and furthering sustainable agriculture, while at the same time addressing the health and environmental harms of industrial agriculture.[1] CFS has 700,000 farmer and consumer members across the country, including tens of thousands in Oregon. One of our flagship CFS programs is protecting farmers and the environment from the adverse impacts of genetically engineered (GE) organisms, including the transgenic contamination of organic and conventional crops.[2] For over two decades, CFS has been the leading public interest organization working to improve the oversight of, and ameliorate the impacts from, agricultural biotechnology.

CFS strongly opposes HB 2509 because the bill creates a significant and unnecessary obstacle for farmers facing crop damage as a result of transgenic contamination. The bill also would directly impair the ability of Oregon county farmers to enforce ordinances that protect their crops, like Jackson County Ordinance 635.

There are a number of fundamental problems with HB 2509. <u>First</u>, HB 2509 would force farmers who have had their crops contaminated by GE crops to undergo a vague and undefined Oregon Department of Agriculture (ODA) mediation process. Mediation may be a good choice for farmers in some circumstances, but the decision as to whether to attempt mediation should be a decision farmers get to make on their own, not one forced on them through legislation. The mediation is essentially forced because HB 2509 establishes that any farmer who does *not* participate in such a process may be liable for the opposing party's court costs and attorney fees. These risks would make potential legal action impossible for the vast majority of small family farmers because they could never afford to pay the legal fees of a GE crop farmer or business, who would likely be joined by or have their legal expenses paid for by Monsanto, Dow AgroSciences, or other multinational chemical companies that patent and sell the vast majority of GE seeds. Mediation would also make timely, proactive action to prevent contamination impossible, instead requiring the farmer to engage in a time consuming and undefined ODA mediation process.

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[1] *See generally* www.centerforfoodsafety.org
[2] *See* http://www.centerforfoodsafety.org/issues

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Second, providing ODA the authority to implement a required mediation—particularly one lacking time limits, maximum costs, and otherwise leaving unbridled discretion—would be a major mistake. Here, ODA would have the discretion to make the mediation process a substantive barrier to famers needing remedy from transgenic contamination. Nothing in HB 2509 cabins the fees ODA could charge, or the time that ODA could mandate; the potential for such requirements to change could create even further obstacles for contaminated farmers.

Further, ODA has generally shown itself to be an agency incapable of overseeing any neutral process regarding oversight of GE crops and addressing transgenic contamination. Instead, ODA has been a mouthpiece of the agricultural biotechnology industry, refusing to improve oversight and address the impacts of GE crops at the state level, and consistently putting the interests of industrial agriculture over family farmers. For example, in August 2012, ODA proposed to lift the decade-plus prohibition on the growing of industrial canola (95% of which is genetically engineered) in the Willamette Valley, threatening the crown jewel of Oregon's agriculture, that Valley's specialty seed industry. Worse, ODA attempted to make this regulation change with no notice, under the excuse of an "emergency" rulemaking, when in fact there was no such emergency. CFS, Friends of Family Farmers, and others were forced to sue ODA on behalf of local Willamette Valley farmers. The Court agreed that ODA's attempted opening of the valley was unlawful, issuing an injunction halting it.[3] Despite significant contamination risks to established farmers, ODA again attempted to open the Willamette Valley, this time through notice and comment rulemaking, in fall 2012 and spring 2013.[4] CFS and others again sued ODA to stop that attempted change, but before the Court could decide the second case, the Legislature thankfully mooted the case by continuing the canola prohibition legislatively.[5] At the same time, ODA has repeatedly declared (erroneously) that it lacks the authority to improve oversight and prevent contamination at the state level. In sum, ODA's position about its oversight and its unlawful attempts to create widespread transgenic contamination in the Willamette Valley do not produce confidence that the agency would be willing and able to run a neutral and fair mediation process.

Third, HB 2509 would improperly intervene with the operation of Jackson County Ordinance 635, and any other future Oregon county ordinances regulating genetically engineered crops, by requiring any party that believes that growing GE crops "might interfere with or is interfering with the farming practice" to engage in the ODA controlled mediation process, or risk paying the defendants attorney fees. CFS strongly opposes requiring a vague ODA mediation process as a

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[3] *See* http://www.centerforfoodsafety.org/press-releases/724/oregon-court-of-appeals-grants-stay-canola-planting-in-willamette-valley-halted

[4] *See* http://www.centerforfoodsafety.org/press-releases/2127/farmers-and-sustainable-ag-groups-file-lawsuit-challenging-new-canola-rule-that-threatens-100-million-industry

[5] *See* http://www.centerforfoodsafety.org/press-releases/2446/victory-for-willamette-valley-farmers-and-public-as-oregon-governor-signs-moratorium-on-canola-production

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prerequisite to enforcement of Jackson County's democratically-passed decision to protect family farmers.[6]

Fourth, HB 2509 would codify language explaining that the process is needed "to assist the parties in attempting to reach agreement on issues regarding the coexistent use of agricultural lands." CFS does not believe "coexistence" is a term, or an idea, that properly addresses the harm that is transgenic contamination.[7] Contamination is a one-way ratchet, only causing harm to the traditional farmer. It is not accurate to say that conventional and GE crops can "coexist" when there is an imminent and constant threat of contamination, with all the burden of prevention being unjustly placed on the conventional farmer to try and avoid such contamination. The proper focus, and terminology, is contamination prevention, not so-called "coexistence." And as part of that, CFS supports the existence of GE-free agricultural zones, as numerous counties in numerous states across the country have now created.[8] Contamination prevention requires the establishment of these alternative zones, as traditional "coexistence" measures proposed by the biotechnology industry have shown time and time again to be unable to protect farmers from transgenic contamination. As such, we do not think farmers should be forced to engage in mediation improperly focused on using methods that past precedent has shown will not work to prevent contamination.

For the above reasons, CFS strongly opposes HB 2509, and respectfully requests that the committee reject it. We would be happy to answer any follow up questions.

Sincerely,

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[6] *See* http://www.centerforfoodsafety.org/press-releases/3165/two-counties-in-oregon-ban-planting-of-ge-crops
[7] *See* http://www.centerforfoodsafety.org/files/cfs-final-contamination-prevention-not-coexistence-comments-34_33464.pdf
[8] *See* http://www.centerforfoodsafety.org/issues/311/ge-foods/press-releases/3588/genetically-engineered-crops-banned-in-humboldt-county-7th-county-to-vote-for-ban